IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1945

Nos. 631 and 671.

THE PEOPLE OF THE STATE OF ILLINOIS, ex rel. LEE VAN WOODS,

Petitioner,

vs.

WALTER NIERSTHEIMER, Warden, Illinois State Penitentiary, Menard, Illinois,

Respondent.

BRIEF FOR RESPONDENT FILED AFTER GRANTING OF CERTORARI AND IN RESPONSE TO PETITIONER'S BRIEF.

GEORGE F. BARRETT,
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RESPONDENT'S ACCEPTANCE OF PETITIONER'S STATEMENT OF THE FACTS.

Counsel for the petitioner, with the fairness that is to be expected of a member of the bar whom this Court has selected to argue the prisoner's side of an important question in the domain of constitutional law and civil freedom, has accurately and fully stated the facts, which consist of the petitioner's undenied allegations.

The respondent concedes that petitioner's allegations charge, not as mere conclusions but with the specificity of detail requisite under the canons of pleading, that a confession was extorted from him by unlawful assaults com-

mitted by police officers, that counsel appointed by the court entered a plea of guilty on behalf of petitioner without petitioner's consent, that petitioner was denied an opportunity to summon witnesses who would have testified in his behalf and that petitioner did not have the means to employ other counsel. Respondent concedes that these allegations, although a trial of the issues which they tender would require an investigation of matters *dehors* the record, charge denial of due process of law under the Fourteenth Amendment if Illinois has failed to afford adequate procedure for petitioner's relief.*

But although respondent accepts petitioner's statement of the facts and concedes that such facts constitute denial of due process if Illinois has failed to provide an adequate remedy, respondent does not concur in petitioner's delineation of the questions of law presented. Respondent's conception of the questions presented to this Court in this case appears immediately below.

Respondent's Statement of the Questions Presented.

1. Was Illinois' statutory substitute for the writ of error *coram nobis* an adequate and the exclusive means of vindicating the constitutional rights which he asserts?

2. If Illinois afforded petitioner an adequate and exclusively appropriate means of vindicating his rights by statutory proceedings in the nature of *coram nobis*, could Illinois, compatibly with a proper construction of the Fourteenth Amendment, require petitioner to exhaust that means within the five-year period fixed by the statutory remedy in the nature of *coram nobis*?

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* Cf. *White* v. *Ragen* 324 U. S. 760; *House* v. *Mayo*, 324 U. S. 42; *Tomkins* v. *Missouri*, 323 U. S. 485, and many other decisions of this court.

ARGUMENT.

A SUMMARY OF ARGUMENT APPEARS IN THE INDEX, ANTE, PAGE I.

I.

Petitioner had an adequate and exclusively appropriate remedy by coram nobis.

The applicable Illinois statute, which appears at Ch. 110, Par. 196, Ill. Rev. Stats., 1945*, quoted in the margin, abolishes the writ of error *coram nobis* and provides that all errors of fact committed in the proceedings of any court of record which formerly could have been corrected by such writ may now be corrected by the court committing the error upon motion in writing. The motion must be made within five years with certain exceptions, one of which is made for persons who are under duress, in which case the five years run from the time the duress ceases. The effect of this statutory period of limitation is considered under Point II, *post*.

In *White* v. *Ragen*, 324 U. S. 760, the question whether the Illinois statutory substitute for *coram nobis* afforded a plain, speedy, adequate and exclusively appropriate remedy in cases like the present one was presented and argued but not reached because, *White* v. *Ragen* and the companion case of *Lutz* v. *Ragen* being original proceedings in the Supreme Court of Illinois, this court took cognizance

* "The writ of error *coram nobis* is hereby abolished and all errors in fact, committed in the proceedings of any court of record, and which, by the common law, could have been corrected by said writ, may be corrected by the court in which the error was committed, upon motion in writing, made at any time within five years after the rendition of final judgment in the case, upon reasonable notice. When the person entitled to make such motion shall be an infant non compos mentis or under duress, at the time of passing judgment, the time of such disability shall be excluded from the computation of said five years."

of the Illinois rule that the Illinois Supreme Court does not entertain petitions obviously tendering controverted issues of fact but in such cases remits petitioners to remedy by *habeas corpus* in state trial courts of general jurisdiction *where habeas corpus is appropriate at all.*

But in speaking of the respondent's (the warden's) contention in the *White* and *Lutz* cases that *habeas corpus*, even if prayed in the trial courts of general jurisdiction, would not have lain because *coram nobis* was the exclusively appropriate remedy, this court said:

> "* * * We do not reach the alternative argument, made by the Attorney General, that petitioners' remedy in the state courts is not habeas corpus, but the statutory substitute for the writ of error *coram nobis*, Ill. Civil Practice Act. § 72, Smith-Hurd Stats. c. 110, § 196, and that the two remedies are mutually exclusive."

This question, which was not reached in the *White* and *Lutz* cases, is directly presented in the instant case. We submit that the considerations hereafter briefly developed clearly demonstrate that under the jurisprudence of Illinois, statutory *coram nobis* was clearly and plainly available to the petitioner in the instant case as an absolute matter of right and was the only remedy available. Under Point II, *post*, we argue that petitioner's failure to exhaust that remedy within the five year period does not vest him with a present right to *habeas corpus*.

The case of *People* v. *Green*, 355 Ill. 468, is precisely apposite. We respectfully bespeak attention to its holding. A study of that case peremptorily disposes of any question as to the availability of the statutory proceeding called *coram nobis*. In that case, petitions had been filed under the *coram nobis* provision above quoted, setting forth that, to quote the language of the Supreme Court of Illinois at page 470, "the defendant was not rep-

resented by counsel" and that evidence could be produced showing that he was not guilty of the charge. In each of several cases involved; the trial court vacated the judgment and granted a retrial of petitioner.

The Supreme Court of Illinois said at page 473:

> "A writ of error *coram nobis*, or a motion under the statute, is an appropriate remedy in criminal cases as well as civil and lies to set aside a conviction obtained by duress or fraud, or where by some excusable mistake or ignorance of the accused, or without negligence on his part, he has been deprived of a defense which he could have used at his trial, and which, if known by the court, would have prevented conviction. (*People* v. *Crooks, supra; Sanders* v. *State*, 85 Ind. 318, 44 Am. Rep. 29; *State* v. *Calhoun, supra;* 2 R. C. L. sec. 266; 18 L. R. A. 842, note: *People* v. *Perez*, 98 Pac (Cal.) 870). Since the judgment entered upon such proceeding is final and the proceeding is civil in its nature, either the State or the defendant is entitled to a review of the judgment of the court entered on such motion or petition."

This case plainly charts appropriate practice.*

Two other cases that are directly in point and that should be considered together are *People* v. *Drysch*, 311 Ill. 342 and *City of Chicago* v. *Nodeck*, 202 Ill. 257. The *Drysch* case states very clearly and precisely that in cases like the instant ones relief by way of *coram nobis* is peculiarly appropriate.

In the *Drysch* case it was contended that certain witness testified perjuriously and fraudulently. **In the Drysch case, there was no showing that any public official was privy to the fraud upon the courts.** The petitioner in

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* "In *People* v. *Crooks, supra*, it was held that the sufficiency of the motion or petition may be raised by demurrer, plea of *nullo est erratum*, by motion to dismiss, by pleading special matters in confession and avoidance, or by making an issue of fact by traversing the allegations. Such was likewise the holding of this court in *Harris* v. *Chicago House Wrecking Co., supra.*" *People* v. *Green*, 355 Ill. 468, at 475.

the *Drysch* case relied upon the case of *City of Chicago* v. *Nodeck*, 202 Ill. 257. In the *Nodeck* case **there was a showing not only of fraud but of complicity on the part of counsel for one of the parties who was a public official.** The Supreme Court of Illinois, distinguishing the *Drysch* case from the *Nodeck* case upon grounds which are fatal to the petitioner in the instant cases, said at pages 348-349 (Emphasis supplied):

> "The defendant argues the proposition that where a verdict is obtained by the admitted perjury of a witness it may be ground for vacating the judgment even after the judgment term, citing *City of Chicago* v. *Nodeck*, 202 Ill. 257. It is held in that case that a court has power to vacate a judgment at any time after the expiration of the term where the court was without jurisdiction to enter the judgment, and also that where a judgment has been obtained through fraud, such fact constitutes a sufficient reason for vacating it after the term in which it was rendered. **The fraud, however, must be a fraud committed by one of the parties on the court and not the perjury of a witness.** In the case cited the fraud was the fraud of the City of Chicago, one of the parties to the suit. * * *"

In the *Nodeck* case, where counsel for the City was privy to the perjury, statutory *coram nobis* was available. In the instant case, police officers and the public defender, a state representative, are charged with participation in the denial of fundamental rights.

In other words, the Illinois rule is that if *without the privy of any party to the suit*, a witness commits perjury or if he is prevented from testifying, due process is not denied and neither *coram nobis* nor any other remedy is appropriate; for it is the purity of the tribunal and of public officers, not that of witnesses who testified falsely without knowing complicity of the state's representatives, that is required by due process.

But if, as the petitioner charges is the fact in the instant cases, the imposition upon the court, either by the profferance of perjured testimony or the suppressing of truthful testimony, is accomplished by the connivance of the parties, the judgment may be vacated. Of course, the complicity of public officials acting on behalf of the state in denying petitioners an opportunity intelligently to plead to an indictment and to procure witnesses constitutes a denial of due process if the state does not furnish adequate corrective remedy. Therefore, under the holding of the *Drysch* case, as explanatory of the *Nodeck* case, *coram nobis* is available as a matter of right, and not as a matter of grace; and the court has no discretion to deny it.

Another case that is much in point is *People* v. *Dabbs*, 372 Ill. 160. That case holds that the statutory proceeding in the nature of *coram nobis* is available where the petitioner claimed that "he was fraudulently deprived of his liberty by failure of the state's attorney to inform the court that Hughes was feebleminded, and therefore an incompetent witness against the defendant." Although the claim was held not to be supported by the evidence, the proceeding was regarded as appropriate. In other words, the *Dabbs* case (372 Ill. 160, *supra*) holds that unfair suppression of evidence affords a right to relief by *coram nobis*.

The distinctions between habeas corpus and statutory coram nobis are not formal but are substantial.

The distinctions between *coram nobis* and *habeas corpus* are important and substantial and are founded upon sound and practical considerations of juridical policy.

In the *first* place, the *coram nobis* proceeding must be instituted in the court wherein the judgment was rendered. This would mean that, in the instant cases, the petitioner's

charges, serious if true, would be tried in the venue where, at least presumably, the witnesses and counsel reside.

In the *second* place, the doctrine of *res judicata* attaches to the *coram nobis* proceeding **and an appeal lies from such judgment,** which is not the case with *habeas corpus.* This means that, under the *coram nobis* practice, either the petitioner or the state has a right to review by the Supreme Court of Illinois of the decision of the trial court. (*People* v. *Green,* 355 Ill. 468, already cited, recognizes the finality of judgments upon *coram nobis* by pointing out that the state might appeal from them.) But in Illinois, as at common law, the doctrine of *res judicata* does not apply to judgments refusing a writ of *habeas corpus.* Had either of the trial courts entertained the instant petitions and discharged the prisoner, the state would have had no appeal to or writ of error from the Supreme Court of Illinois.

In *People* v. *McAnally,* 221 Ill. 66, it is said of *habeas corpus* at page 68, that "an order in one proceeding before either a court or a judge thereof is not a final order from which an appeal or writ of error would lie and could not be pleaded as a bar to another or further proceeding." This means that, if Illinois is bound to afford the petitioner a remedy not by *coram nobis* but by *habeas corpus,* then it must afford him an indefinitely large number of such remedies, for he has a right to file as many petitions for *habeas corpus* as he chooses even in the same courts. *Every time that he makes his charges, they must be reinvestigated de novo* by subpoena of the presiding judge, all counsel, and all other witnesses.

II.

Due process is not denied by requiring petitioner to pursue his statutory remedy within five years.

Petitioner's characterization of the Illinois statutory substitute as "an uncertain remedy" is not supported by any indication that it is uncertain in the instant case. There are of course close, doubtful or "borderline" cases with respect to every juridical concept, both of substantive and of adjective law.

But the mere fact that one may conjure cases, suppositious or actual, in which *coram nobis* might be an uncertain remedy, just as one can easily discover cases in which it is doubtful whether the plaintiff should sue at law or in equity, or whether his remedy is in tort or for breach of contract, does not imply that in the instant case, the propriety of the remedy is not obvious. The instant petition charges that the petitioner had a defense that he was prevented from making by fraud or excusable mistake and that the matters of which he complains were not known to the court. It is therefore a classical case, a case *par excellence*, for relief by statutory *coram nobis*.

Illinois having afforded the petitioner an obviously appropriate remedy, (see cases cited, Point I, *ante*,) the question arises whether Illinois may, without violating the Constitution of the United States, require the petitioner to pursue that remedy within a reasonably generous period of time, which in this case is five years.

But this question is readily answered in the accents of this court's own decisions. This court has repeatedly held that, in criminal cases as well as in civil cases, due process is not denied if one whose rights have been infringed is

afforded an adequate opportunity to vindicate those rights; and that if such a person fails to pursue that remedy within a reasonable period fixed by a provision in the nature of statute of limitations, this court will not relieve him in an independent proceeding brought after the limitation period has run.

In *Goto* v. *Lane*, 265 U. S. 393, a *habeas corpus* case, the petitioner claimed denial of federal due process. This court, after holding that petitioner had an adequate remedy by writ of error within a period of time which had elapsed before he sought *habeas corpus*, said at page 402:

> "* * * If it erred in determining them," (that is, questions raised by petitioner) "its judgment was not for that reason void, *Ex parte Watkins*, 3 Pet. 193, 203; *Ex parte Parks*, 93 U. S. 18, 20; *Ex parte Yarbrough*, 110 U. S. 651, 654, but subject to correction in regular course on writ of error. If the questions presented involved the application of constitutional principles, that alone did not alter the rule. *Markuson* v. *Boucher*, 175 U. S. 184. **And, if the petitioners permitted the time within which a review on writ of error might be obtained to elapse and thereby lost the opportunity for such a review, that gave no right to resort to habeas corpus as a substitute.** *Riddle* v. *Dyche*, 262 U. S. 333. And see *Craig* v. *Hecht*, 263 U. S. 255." (Emphasis supplied).

It will be noted that in the excerpt quoted above this court explicitly said that the fact that petitioner's claim "did not alter the rule" and that he must assert such rights within the period fixed by a reasonable statute of limitations.

This court held in *Riddle* v. *Dyche*, 262 U. S. 333, that where a writ of error was available, failure to avail one's self of that remedy did not entitle the petitioner to a writ of *habeas corpus*. In that case the petitioner failed to preserve his rights by taking exception and preserving such points by a bill of exceptions.

The present rules of this court governing criminal procedure allow a convicted defendant only *five days* in which to perfect an appeal from a conviction in the federal courts; and this is true even though the convicted defendant raises claims of fundamental constitutional rights.

Due process is not denied merely by the unlawful acts, however outrageous, on the part of state officers unless the state, in the totality of its juridical process, denies the petitioner a fair opportunity to be heard upon his claims and to vindicate his rights. (*Mooney* v. *Holohan*, 294 U. S. 103.) But even if it were true that due process was denied by the mere unlawful acts of which the petitioner complains, no federal question is presented unless he has exhausted adequate and exclusively appropriate avenues to justice afforded him by the state. (*White* v. *Ragen*, 324 U. S. 760; *House* v. *Mayo*, 324 U. S. 42). In this case, Illinois afforded the petitioner five years in which to make his claims. Was this a reasonable and constitutional prerequisite to the assertion and vindication of his rights?

The period of limitations in *coram nobis* cases to impeach convictions rests upon the soundest grounds of judicial policy. *Coram nobis* (or its statutory substitute) is a remedy appropriate to raise questions of fact. Questions of fact depend upon the testimony of witnesses. Witnesses forget, disappear and die. May a comparatively young defendant, convicted of an atrocious crime, wait until after the death or disappearance of the presiding judge, the state's attorney, the officers who apprehended him or other witnesses to transactions in which he says he was denied due process of law, or until judges, prosecutors, officers and witnesses have forgotten the facts, and then, many years after conviction, make, for the first time, serious charges against the State? If he may, the authority

of the criminal law, which is the law by which all other law is implemented, is gravely compromised.

This is a very important case. Many dangerous men are now in prison for serious crimes. They have been there for years. If the State may not limit the time in which these men may make claims of fiendish brutality in convicting them, then the very principle which vindicates statutes of limitation and repose is set at naught *in the one class of cases in which society's interest is the greatest.*

We submit with the utmost earnestness that it would make a travesty of reason to hold that, though the state and federal governments may limit the time within which one man may sue another for ten dollars lest the defendant be deprived of the means of meeting an unfounded charge, the state may not limit the time within which persons who are found to have committed murders, rapes, robberies, burglaries or other serious offenses against the persons and properties of innocent citizens may make charges imputing bad faith on the part of the government that had convicted them.

There is no need to emphasize that, though the civil liberty of every citizen is precious to the United States Govment, the right of the state, not only to impose penalties for crimes, but to make those penalties effective is the very foundation of peace, order and security. Those penalties, which are society's last sanction against those who take the lives or violate the rights of others and who are not amenable to more gentle civil process, cannot be made effective if every criminal case is made subject to review, at least in respect of charges of corruption on the part of public officials, at any time after conviction that a prisoner seeks to utter such charges. Every consideration that underlies the principles of statutes of limitations is acutely exigent in the instant case and in all criminal cases.

II

A state statute of limitations will be enforced even though the right asserted is a federal right.

It may be suggested (although it has not been suggested thus far) that a state may not enforce a statute of limitations when the right asserted, if it asserts it all, is based upon the Constitution of the United States or other federal law.

But the contrary is well settled doctrine. In *Campbell* v. *Haverhill*, 155 U. S. 610, this court held that a state statute of limitations could and must be given effect in a suit based upon a claim of rights under the Constitution and acts of Congress relating to patents. We do not multiply authority for the point has not been raised and we do not anticipate that petitioner's counsel will controvert its general proposition that even federal rights must be enforced within the time fixed by state statutes applicable to the species of action which is appropriate.

In *Hughes Federal Practice Jurisdiction and Procedure*, section 3679, there is collected a wealth of authority for the principle that state statutes of limitation control even though the right asserted be found upon the Constitution and laws of the United States and even though the proceeding is brought in a federal court. If the federal courts will apply state statutes of limitation as against claims of federal rights, *a fortiorari*, the courts of states enacting a statute of limitation may apply it without violating the Constitution.

But there is another answer to the suggestion, if the suggestion should be made, that a state statute of limitations may be given effect in state courts even though the right claimed is asserted under federal law. That answer

is that this court has held, *not* that the unlawful acts of police officers, prosecuting counsel and the like *per se* deny due process of law, but that due process is denied by the state only when the state itself, in the totality of its sovereignty, in effect sanctions violation of civil rights by failing to afford corrective process. (*Mooney* v. *Holohan*, 294 U. S. 103.)

Petitioner makes no showing of duress or that he was prevented from making his claims with reasonable promptitude.*

Conclusion.

For the reasons urged in this brief, it is submitted that the judgments under review should be affirmed.

Respectfully submitted,

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Attorney General of the State of Illinois,
Attorney for Respondent.

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Assistant Attorney General,
Of Counsel.

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* Other Illinois prisoners have charged that until 1943, the wardens of Illinois penitentiaries held prisoners virtually *incommunicado*, insofar as their efforts, without the aid of counsel, to file petitions for writs of *habeas corpus*, writs of error, or other relief were concerned. Petitioner in the instant case makes no such charge and the court cannot take judicial notice of this practice which was found to exist in *Bongiorno* v. *Ragen*, 54 Fed. Supp. 973, but if petitioner could and did make such charge, then the five-year period for the filing of *coram nobis* would have been tolled by duress; and petitioner still has a remedy by *coram nobis* if he was in fact prevented from making application for *coram nobis* during any considerable time.

SUPREME COURT OF THE UNITED STATES.

Nos. 631 and 671.—October Term, 1945.

Lee Van Woods, Petitioner, 631 *vs.* Walter Neirstheimer, Warden, Illinois State Penitentiary, Menard, Illinois.	On Writ of Certiorari to the Circuit Court of Randolph County, State of Illinois.
Lee Van Woods, Petitioner, 671 *vs.* Walter Neirstheimer, Warden, Illinois State Penitentiary, Menard, Illinois.	On Writ of Certiorari to the Criminal Court of Cook County, State of Illinois.

[May 20, 1946.]

Mr. Justice Black delivered the opinion of the Court.

In 1940 the petitioner was indicted for murder in the Criminal Court of Cook County, Illinois. Adjudged to be guilty on an alleged plea of guilty, he was sentenced to serve ninety-nine years in the state penitentiary. In 1945 he filed two identical petitions for habeas corpus, one in the Criminal Court of Cook County and the other in the Randolph County Circuit Court. In summary the allegations of these petitions were:

On March 8th or 9th, 1940, Chicago policemen came to petitioner's home, accused him of murder, and arrested him. For a period of four days these policemen subjected him to mistreatment in an effort to force him to confess to the crime of murder. The policemen allegedly abused him, beat him with their hands, with blackjacks, and with clubs. At the end of four days, under threat of instant death if he failed to do so, petitioner signed a paper which he later discovered to be a confession. Petitioner averred that he was unable to employ counsel, that he had no counsel, and that he did not consult with counsel during the next two months while he was confined to jail. According to the allegations, petitioner was brought into court at the end of that period, and a public defender appeared as his counsel; but the public defender declined to permit petitioner to explain the circumstances sur-

rounding the confession. Moreover, despite petitioner's repeated assertion of his innocence, the defender allegedly entered a plea of guilty on behalf of petitioner. The allegations further assert that the public defender and the state's attorney threatened petitioner by telling him that he would burn in the electric chair if he did not keep his mouth shut, and that despite these threats petitioner pleaded not guilty and never did at any time consent to the guilty plea which is the basis for his ninety-nine year sentence.

Petitioner's contention before the two trial courts was that a judgment and sentence under these circumstances amounted to a denial of due process of law in violation of the Fourteenth Amendment to the United States Constitution. The Randolph County Circuit Court denied petitioner's application for habeas corpus "for want of jurisdiction and failure to state a cause of action." The Cook County Criminal Court granted the state's motion to dismiss, made on the ground that the petition on its face failed to state a cause of action. In neither court was petitioner afforded an opportunity to offer evidence to prove his allegations. Neither court wrote an opinion explaining its order. Since Illinois does not provide for appellate review of an order denying a petition for a writ of habeas corpus, the orders here involved were entered by the highest courts of the state that could have entered them. See *White* v. *Ragen*, 324 U. S. 760. This Court is consequently authorized to review these orders if they are based on decisions of federal questions. *Tucker* v. *Texas*, No. 87, decided January 7, 1946. Because of the serious violations of the Fourteenth Amendment alleged by the petitioner, and because of uncertainty as to whether denial of his petitions rested on an adequate state ground, we granted certiorari.

The state, through its Attorney General, concedes that the allegations of the petitions for habeas corpus, if true, would show that conviction and sentencing of the petitioner violated the due process clause of the Fourteenth Amendment. The state contends, however, that the applications for habeas corpus were not denied on the ground that the allegations, if proved, would fail to show a violation of due process. According to the state, the denials of petitioner's applications rested on the separate and distinct ground that in the Illinois state courts habeas corpus is not the proper

remedy for relief from judgments violating due process of law in the manner here alleged. The contention is that the exclusive relief against such judgments is provided by a statutory substitute for the common law writ of error *coram nobis*, Ch. 110, par. 196, Illinois Revised Statutes, 1945. The petitioner counters by calling attention to the fact that the statutory remedy is not available unless brought within five years after the rendition of a judgment; that the judgment and sentence against petitioner was rendered more than five years ago; that consequently, if petitioner has no remedy for habeas corpus, he has no remedy at all; that we should not assume that Illinois grants no relief to one whose imprisonment violates rights protected by the United States Constitution, cf. *Smith* v. *O'Grady*, 312 U. S. 329; and that we should therefore hold that habeas corpus is available to the petitioner.

From our investigation of the law of the State of Illinois we conclude that the denials of the applications in this case could have rested, and probably did rest, on the ground that habeas corpus is not the proper remedy in cases such as the one before us. For this reason we are without power to review the judgments, see *Williams* v. *Kaiser*, 323 U. S. 471, 477, and the writs of certiorari must be dismissed. The Supreme Court of Illinois has repeatedly held that a court of the state has jurisdiction of a habeas corpus proceeding only where the original judgment of conviction was void or where something has happened since its rendition to entitle the petitioner to his release. According to Illinois Supreme Court decisions, this means that if the petition and return in the habeas corpus proceeding show that the court which rendered the original judgment had jurisdiction over the person and over the subject matter, and nothing has happened since the conviction to entitle the applicant to his release, the court to which the petition is addressed lacks power to discharge the prisoner.[1] The petitions for habeas corpus here involved did not challenge the court's jurisdiction over the person, nor did they allege that anything had happened since the rendition of the judgment which would entitle the petitioner to his release. The allegations that petitioner did not consent to the guilty plea

[1] See e. g. People v. Zimmer, 252 Ill. 9, and cases discussed; People v. Siman, 284 Ill. 28, 32; People v. Shurtleff, 355 Ill. 210; People v. Thompson, 358 Ill. 81; People v. Bradley, 391 Ill. 169.

and that he was not represented by proper counsel, moreover, did not challenge jurisdiction over the subject matter, within the meaning of that term as used in defining the power of Illinois courts to release prisoners on habeas corpus.[2] Consequently it seems highly probable that under the Illinois decisions the writ of habeas corpus was not the proper remedy in this case. That this is so is further borne out by the fact that in Illinois orders denying petitions for habeas corpus are not subject to appellate review *People* v. *McAnally*, 221 Ill. 66, 68. We cannot assume that Illinois would so far depart from its general appellate procedure as to deny appellate review of orders denying applications for habeas corpus, if such applications were the proper procedure for challenging violations of fundamental rights to life and liberty guaranteed by the United States Constitution.

Since the record thus shows that petitioner's applications for a writ of habeas corpus were probably denied because he did not seek the proper remedy under Illinois law, it does not appear that the judgments we are asked to review do not rest on an adequate non-federal ground. Nor do the denials of petitioner's applications for habeas corpus present a federal question merely because the five-year statute of limitations on the statutory substitute for the writ of error *coram nobis* has expired. Petitioner claims that this leaves him without any remedy in the state courts. But we do not know whether the state courts will construe the statute so as to deprive petitioner of his right to challenge a judgment rendered in violation of Constitutional guarantees where his action is brought more than five years after rendition of the judgment. Nor can we at this time pass upon the suggestion that the Illinois statute so construed would itself violate due process of law in that a denial of that remedy, together with a denial of the

[2] See *People* v. *Fisher*, 340 Ill. 250, where the Supreme Court of Illinois made the following statement on p. 260:

"If the jury is an essential part of the tribunal without which the court has no jurisdiction of the subject matter, it is not discernible how, upon a plea of guilty in a criminal case, a valid judgment can be rendered. Yet the power of the court, without a jury, upon such a plea, to find the defendant guilty and render judgment is unquestioned. A court's jurisdiction of the subject matter is not determined by the plea which a person charged with a crime may interpose. Before he appeared at the bar of the tribunal, it either was or was not vested with jurisdiction of the subject matter of his cause. If the court possessed such jurisdiction, it was conferred by or pursuant to some provision of the constitution, and not by the act or consent of the defendant."

writ of habeas corpus, would, taken together, amount to a complete deprivation of a state remedy where Constitutional rights have been denied. We would reach that question only after a denial of the statutory substitute for the writ of error *coram nobis* based on the statute of limitations had been affirmed by the Supreme Court of the state.[3] Furthermore, it cannot be doubted that if the State of Illinois should at all times deny all remedies to individuals imprisoned within the state in violation of the Constitution of the United States, the federal courts would be available to provide a remedy to correct such wrongs. *Ex parte Hawk*, 321 U. S. 114.

Dismissed.

Mr. Justice JACKSON took no part in the consideration or decision of these cases.

[3] A judgment in a *coram nobis* proceeding is final and appealable in Illinois. See *People* v. *Green*, 355 Ill. 468.